

Questioning Paraguay's Suspension from MERCOSUR: The First Application of the Democratic Clause of the Regional Bloc

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Abstract: This article analyses the first enforcement of the MERCOSUR Democratic Clause, which occurred during the XLIII Summit of Heads of State in 2012. It was decided to suspend Paraguay because the member states concluded that the impeachment process of Paraguayan President Fernando Lugo did not follow democratic principles. Since the event raised questions and controversies, the article contributes to an explanation of the decision-making process that culminated in the political suspension of Paraguay from the regional bloc. It is argued that the state parties of Mercosur, justified by Paraguay's historic political and economic fragility and the context of President Fernando Lugo's impeachment, have strategically used the clause in order to achieve interests beyond the defence of democracy, among them Venezuela's adhesion to the Bloc.

Key words: MERCOSUR; Ushuaia Protocol; Democratic Clause; Paraguay; Venezuela.

Introduction

The first enforcement of the MERCOSUR Democratic Clause occurred after the XLIII Summit of MERCOSUR Heads of State in 2012. On that occasion, it was decided to suspend Paraguay since member states concluded that the process of impeachment of Paraguayan President Fernando Lugo (2012) had violated that clause. After the suspension of its political, but not economic, rights, Paraguay ceased to participate in the meetings and decisions of the regional organization.

The Democratic Clause is a result of the 1980s conjuncture, when the re-democratization process of many South American countries brought to light the issue of democracy

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in the region. Part of the literature on the topic considers the region's democratic transitions to be fundamental for the integration processes in Latin America (Pont 2011; Freixo and Ristoff 2008; Sturaro and Frota 2012). Thus, the creation of MERCOSUR, despite its economic focus, would also seek regional stability and the consolidation of democratic reforms on the region.

In the 1990s, mechanisms for the control, supervision and promotion of such principle were established and incorporated into the legal-institutional framework of MERCOSUR. The agreements signed at the beginning of the construction of the bloc had an 'implicit' Democratic Clause. Thus, although not explicitly expressed in the agreements, it was possible to observe that the democratic principles underpinned the proposals of co-operation and integration. An example of this fact can be seen in the Declaration of Iguazu, signed in 1985 by Brazil and Argentina, which, while representing the starting point of the process of co-operation and integration between countries in the region, reaffirmed their commitment to democracy, defining it as the foundation of integration. At the time, both countries were coming out of a period of dictatorial governments.

However, the institutionalization of the bloc's democratic commitment only took place after the attempted *coup d'état* by General Lino Oviedo, in 1996, in Paraguay. Thus, on 25 June 1996, during the Presidential Summit in San Luis (Argentina), the democratic commitment in MERCOSUR was formalized. On that occasion, the presidents of the member states jointly declared their 'adherence to the democratic principle', formalized in the Presidential Declaration on Democratic Commitment in MERCOSUR (Pont 2011). Thus, Decision No. 18/04 of the Common Market Council (CMC) established that countries interested in joining MERCOSUR should sign both the Presidential Declaration and the Ushuaia Protocol. However, the first case of application of the Mercosur Democratic Clause was the subject of intense debate between academics and politicians (Mata Diz 2012; Almeida and Santana 2014; Paiva et al. 2015). There was doubt about the opportunism of its application. In this tone, it was asked if there were other reasons besides the alleged 'democratic defence' in the decision to suspend Paraguay from MERCOSUR. If there were, how would it be possible to understand such 'complementary' purposes? Also, what are the characteristics and context of application of a 'permissive' application of the norm? In line with these questions, this article will investigate the decision-making process of MERCOSUR in order to identify which factors and wills influenced the decision to apply its Democratic Clause for the first time.

Thus, considering that Foreign Policy Analysis (FPA) aims to analyse how decisions are made, we understand that such theoretical and methodological perspective serves to map the factors that contributed to the process suspension of Paraguay from MERCOSUR. Hill (2003), Hermann (2001), Hudson (2007) and Frieden (1999) argue that the understanding of the dynamics of actions and decision-making processes of states or groups must take into account the interactions between the international and the domestic, the actors' preferences and interests and the structural elements and composition of the decision unit.

Hill (2003) points out that we can only understand a state's actions based on the analysis of the interactions between its international position and its domestic context, as well as the issue to be discussed and the nature of the decision-making process formulated. Hermann (2001) advocates that there are domestic and external factors that influence the result of foreign policy and that decisions may be constrained or influenced by the context in which the decision was taken. In turn, Hudson (2007) analyses that structural elements of a group (such as the distribution of power and the role played by each member of the group) generate important consequences for the decision-making process, given the ramifications that these choices can have. Furthermore, according to Frieden (1999), the interests of decision makers are central to the study of international politics. Thus, from the establishment of preferences, an actor makes strategies based on the possibilities given by the environment in which he is inserted.

Based on these theoretical premises briefly outlined above and seeking to identify the reasons for applying the Democratic Clause to Paraguay, the article lists four variables that motivated the decision. They are: 1) Paraguay's historical and political trajectory and its political and economic weaknesses compared to the other member countries; 2) the regional context; 3) the weaknesses of MERCOSUR Democratic Clause; and 4) the opportune adhesion of Venezuela to MERCOSUR. Thus, the main objective of the work is to test the hypothesis that such a decision also reflected interests outside the defence of democracy.

Therefore, this article, after this introduction, is divided into 2 parts. The first will clarify historical and substantive aspects of the Democratic Clause. The second will deal with the four explanatory variables for the case of Paraguay's suspension from MERCOSUR, thus, it will be subdivided into four sections. Finally, the final considerations will be presented that summarize the findings of this contribution to the understanding of the inaugural use of the Mercosur Democratic Clause.

The MERCOSUR Democratic Clause

The MERCOSUR Democratic Clause was introduced and regulated through the Ushuaia I Protocol, signed on 24 July 1998, in the homonymous Argentine city. The original signatories are four Member States (Argentina, Brazil, Uruguay and Paraguay) and two associates at the time (Bolivia and Chile). Nevertheless, Ushuaia I just came into effect in January 2002 containing 10 Articles.

Article 1 states that: 'The full effectiveness of democratic institutions is an essential condition for the development of integration processes between the States Parties to this Protocol.' Article 3 states that: 'Any breach of the democratic order in one of the States Parties to this Protocol shall entail the application of the procedures set forth in the following articles'. The procedure will start, as established by Article 4, after the breach of the democratic order in one of the States Parties is verified. Thus, after the necessary consultations and conclusions, article 5 provides that the other States Parties shall consider the nature and scope of the measures to be applied in proportion to the attested seriousness.

Penalties range ‘from the suspension of the right to participate in the different bodies of the respective integration processes to the suspension of rights and obligations resulting from these processes’ (Protocol of Ushuaia 1998).

As provided for in Article 6, the decision to adopt the measures provided for in Article 5 shall be taken by consensus among the States Parties, and communicated to the transgressive state, which will not participate in this decision-making process. The measures will come into effect on the date on which the communication is made. Article 7, in turn, provides that the measures applied to the transgressive state shall cease as soon as the communication to that state of the agreement of the other members that the full restoration of the democratic order in that state has been verified. (Protocol of Ushuaia 1998).

However, it should be noted that the Protocol does not contain a specific concept of ‘breaking the democratic order’. It also does not define which concept of democracy should guide member countries (Monte and Anastasia 2017). This absence raised questions about the possible ‘casuistic’ use of this clause, since the concept of democracy has different strands and interpretations. According to Chayes and Chayes (1993), the ambiguity of a standard can lead to ‘non-compliance’, creating an area of ambiguity and imprecision for conduct and application of sanctions. In line with this argument, Abbott et al. (2000) advocate that imprecise rules, given the absence of a centralized legal structure that could nullify inappropriate interpretations, can be interpreted and applied by actors in a way that is more favourable to their interests.

Aiming to bring innovations to the original text, a new protocol was signed in 2011 in Montevideo. Ushuaia II, now with 12 articles, determined clearer measures to be taken by the signatory states in case of rupture of the democratic order. It also improved consultation mechanisms among members and allowed for more incisive sanctions in cases of breach or threats of breach of the democratic order. However, in order to come into effect, Ushuaia II must be internalized through a private legislative process by all members of the bloc and, as provided for in Article 11, it will enter into force thirty days after the deposit of the instrument of ratification by the fourth State Part of MERCOSUR. A fact that made it inoperative at the time of its invocation in the Paraguayan case of 2012, considering that only Venezuela (2013) and Ecuador (2014) had already ratified it at that time.

Article 1 of the protocol extends the provision of Article 3 of the 1998 protocol and determines that the clause may be triggered not only by the rupture of the democratic order of a country, but also in the case of a threat of violation of the constitutional order or any situation that puts the legitimate exercise of power and the validity of democratic principles at risk. Article 2 specifies that the presidents of the States Parties or, in their absence, the ministers of foreign affairs, in an expanded session of the Common Market Council, will be the ones who will promote consultations with the constitutional authorities of the affected state, seeking through ‘diplomatic steps’ to promote the restoration of democracy in that country. This meeting shall be held in the territory of the Party in office of the Pro Tempore Presidency of the bloc (Protocol of Ushuaia 2011).

Another novelty is found in Article 4, which allows a state, deeming that some of the situations listed in Article 1 are occurring in its territory, to ask the Presidents of the

other members for assistance in strengthening and preserving democratic institutions. Also, pursuant to Article 6, the following measures may be applied: a) suspension of the right to participate in the different organs of the bloc's institutional structure; b) total or partial closure of land borders; c) suspension or limitation of trade, air and sea traffic and the provision of services and supplies; d) suspension of the enjoyment of the rights and benefits arising from the Treaty of Asuncion and its Protocols and from the Integration Agreements entered into between the Parties; e) other political and diplomatic sanctions. Article 9, unlike Article 6 of the 1998 Protocol, provides that the measures applied to the affected party will enter into force on the date the respective decision is adopted, and no longer on the communication to the affected state. In turn, this article maintains the provision that the measures will cease from the date on which the decision of the other parties in this regard is communicated to the affected party (Protocol of Ushuaia II 2011, *passim*).

Having presented important characteristics of the Democratic Clause and considering some of its limitations, we will now move on to the analysis of when and how it was applied to Paraguay. It should be remembered, then, that the process by which treaties are formulated and concluded seeks to ensure the accommodation of the interests of the negotiating states. In this way, since states have no legal obligation to adhere, they would only submit to treaties that they agree to. This implies that governments normally assume international legal obligations that are in their interest (Chayes and Chayes 1993). In the specific case, it is clear that the application of the Democratic Clause implies the need to assess the democratic quality of the member states. But what are the parameters of this judgment, considering that MERCOSUR's normative instrument does not present clear guidelines for such a judgment? So, in order to understand the motives of the first application of the Democratic Clause of the bloc, 4 explanatory variables concerning such decision-making process will be depicted.

The explanatory variables for the case of Paraguay's suspension from MERCOSUR

Before the explanatory variables are presented, a brief consideration is made on the theme. Initially, it is necessary to clarify that when Paraguay was suspended the lawful Protocol was Ushuaia I. Thus, the procedures that should be adopted were those provided by that 1998 agreement. In this sense, Paraguay's suspension was based on the alleged illegality of the process of impeachment suffered by President Fernando Lugo. One of the arguments invoked was the 'short' political trial carried out by the Paraguayan Congress, which inaugurated Federico Franco as President in less than 48 hours. According to Santos and Santos (2015), the impeachment process would have been the result of an intense political and institutional crisis between the President and the Paraguayan Congress. Fernando Lugo had no political support from the traditional parties and therefore faced a majority against his government in Congress. In addition, Mattos (2018) points out that the election of a former bishop of the Catholic Church, in addition of representing the rise of the

left to power, was the election of the first candidate who did not belong to the Colorado Party, which had remained in power for over sixty years.

Although the process was considered legitimate by the Superior Electoral Court of Paraguay, there were many divergent opinions from International Organizations and Heads of State of South American countries. The Inter-American Commission on Human Rights, an autonomous organ of the Organization of American States (OAS), considered the procedure illegitimate and illegal. Through a statement released to the media, the Commission stated that such event 'is a parody of justice and an affront to the rule of law to remove a president within 24 hours, with no guarantees to defend himself' (BBC 2012). OAS President José Miguel Insulza said that the Lugo impeachment procedure was a 'summary judgment which, although formally adhering to the law, does not seem to comply with all legal precepts of the State of right of self-defence' (BBC 2012). Likewise, Unasur, through its commission of Chancellors, considered that the process of removing Lugo did not respect due legal process and should be considered as a threat of breaking the country's democratic order (G1 2012).

Faced with the troubled process, most South American governments considered the episode as a 'coup d'état'. Shortly after Lugo's removal, the Argentine government withdrew its ambassador from Paraguay. Political leaders from neighbouring countries also called the episode a 'coup d'état'. Among them, the President of Argentina, Cristina Kirchner, and the Bolivian President, Evo Morales. In its turn, the Brazilian government summoned its ambassador for consultations. So did Chile. Uruguayan President José 'Pepe' Mujica called the removal of Fernando Lugo a 'Parliamentary coup d'état' (BBC 2012).

Another controversial point was Venezuela's entry into MERCOSUR almost simultaneously with the Paraguayan suspension. Thereupon, it was argued that such measures could have been strategically applied to enable Venezuela's entry into the bloc, as the only state to oppose such inclusion was Paraguay. Almeida and Santana (2014) also point out that countries like the United States and Canada did not endorse Paraguay's suspension decision, as they considered Venezuela's entry policy in the bloc to be inconsistent, since it was only possible after the suspension of Paraguay from the bloc.

Thus, it seems reasonable to argue whether the decision-making process that culminated in Paraguay's suspension served interests outside the concern with the democratic issue. In this sense, it is noteworthy that, in addition to the concern with the democratic stability of one of the member countries, Brazil and Argentina also seemed to be looking for an opportune moment to allow Venezuela's entry into the Bloc, in view of Paraguay's recurring veto. In addition to the lightness of Paraguay's suspension decision, the non-compliance with all phases of the procedure provided for in Ushuaia I is emphasized. Therefore, the occasion of Paraguay's suspension would have explained the opportunistic use of the Democratic Clause, with Paraguay's suspension being convenient to Venezuela's entry into the bloc.

After this brief preamble on the topic under analysis, let us look at four variables that contribute to the explanation of Paraguay's suspension process.

1) *Paraguay's historical and political trajectory and its institutional weaknesses compared to the other member countries*

Paraguay's political trajectory was marked by dictatorships, conflicts with neighbouring countries and political instabilities.¹ The absence of an alternation of political and party ideologies is portrayed by the permanence of the Colorado Party in the leadership of the government for more than 60 years. Therefore, the political situation in Paraguay has been derived from a turbulent historical and political trajectory. Such history contributed to Paraguay being considered, mainly from a political point of view, the member state with the greatest institutional weakness within the regional bloc. According to Rolon (2010), political instability was a striking feature in the Paraguayan political trajectory until recent years.

According to Yegros and Brezzo (2013), the removal of Alfredo Stroessner Matiauda² in 1989 and the political opening provided by the next government of Andrés Rodríguez ended the political isolation suffered by the country previously. The Rodríguez government aimed to restore respect and promotion of Human Rights in order to restore international confidence in the country. The Covenant on Civil and Political Rights and the Covenant on Economic and Social Rights, signed within the scope of the United Nations, were ratified. The adoption of the American Convention on Human Rights (San José Pact, Costa Rica) was also approved (Yegros and Brezzo 2013). However, Rolon (2010) argues that Paraguay's re-democratization process brought about few and insufficient political and social reforms, causing many practices of the Stroessner government in the 21st century to persist in the following years. Mattos (2018) observes that the permanence of the Colorado party in power, even after the removal of the dictator, resulted in the permanence of the clientelist relations of the dictatorial period and low institutionalization, in addition to the influence of the military and 'stronist' sectors. In this sense, Mattos (2018) indicates the perpetuation of a democratic 'deficit' in Paraguay.

Fernando Lugo was the first president elected outside the traditional line of Paraguayan political actors. However, President Lugo was unable to complete his term due to fierce opposition and dissent against his government, especially from the parliament. Given this, Paraguay also demonstrates a fragile presidential system, considering that after the dictatorial government of Stroessner Paraguay underwent three impeachment processes. Of the three impeachments, Fernando Lugo was the only to be removed from the presidency (Mattos 2018).

Stroessner was removed from power after suffering a coup carried out by the opposition wing within the Colorado Party, led by Andrés Rodríguez. Rodríguez's main objective, according to Mattos (2018), was to achieve recognition by the international community in order to obtain legitimacy in the domestic sphere. Rodríguez failed to be re-elected. Juan Carlos Wasmosy, a businessman from Colorado Party, was the first civilian to be elected president after the Stroessner regime. His term was between 1993 and 1998.

During Wasmosy's government, his problematic relationship with General Lino Oviedo was noteworthy. According to Mattos (2018), the controversy between the two

leaders worsened when Wasmosy asked for Oviedo's removal in mid-1996. During this crisis period, three foreign ministers from MERCOSUR members visited Paraguay and threatened to remove Paraguay from the bloc in case Wasmosy was ousted from office. It is noteworthy that this crisis set the stage to assess the need to establish a Democratic Clause in the regional bloc.

In the regional context, in recent years Paraguay has stood out more for its negative aspects. Among them, issues of a political nature stand out, such as internal instability and democratic deficit. In addition, one may also observe government corruption, smuggling, and the massive sale of counterfeit products. According to Rolon (2010), this picture would reinforce the image of a country 'incapable' of solving its own problems.

Despite all the reforms the country underwent in the context of post-Stroessner re-democratization, Yegros and Brezzo (2013) consider that the most significant event that took place in these years was the decision to be part of the MERCOSUR construction process. In the mid-1990s, the country was invited to join the integration led by Argentina and Brazil, countries that through this negotiation process seemed to have overcome the rivalry of the past.

However, the decision to enter the integration process created a dilemma for Paraguay, as it was aware that the opening of its economy would generate negative effects for its commercial and industrial activities. However, Yegros and Brezzo (2013) observe that after consulting different political and business sectors the country decided to adhere to the process. It was taken into consideration that the country did not have other options, as well as that the adhesion to the process would provide negotiating capacity, even if only on trade issues. The Paraguayan representation at MERCOSUR pleaded, at different times, for the establishment of supranational bodies capable of ensuring the priority of common interests. They also advocated the validity of the principle of solidarity between member States and a more advanced dispute settlement system, which later became a reality with the signing of the Olivos Protocol, which represented the establishment of a new dispute settlement system in the bloc, with the creation of a permanent review court (TPR) and the implementation of other measures.

In addition, from the 1990s onwards, Paraguay's dependence on MERCOSUR countries, especially Argentina and Brazil, deepened, mainly on economic issues, but with repercussions in the political sphere. As a result, modern Paraguay, in geopolitical terms, must be seen as a country that must balance its position between two neighbouring powers that rival in search of hegemony in the Southern Cone. So, due to its geographical position, its territorial extension, its population and its need to 'exit' to the sea, Paraguay is compelled to maintain a good relationship and a good 'political game' with both sides, Brazil and Argentina (Rolon 2010).

Nevertheless, the Paraguayan foreign policy promoted by President Fernando Lugo aimed to diversify partnerships and links with other countries beyond the traditional alignment with Brazil and Argentina. Luís, Berdu and Zague (2015) identify Paraguayan foreign policy activism in this period, demonstrating that Lugo sought to promote changes

in the structure of the regional political system, aiming to make it more egalitarian in relation to countries with less power resources.

Throughout Lugo's government, obstacles remained within the scope of MERCOSUR, and the greatest difficulty that affected 'not only Paraguay, but also other members of the South American bloc, was Argentina's protectionism policy' (Luís, Berdu and Zague 2015). In addition, the terms imposed on the country in negotiations within the bloc are problematic due to its geographical condition, constantly depending on neighbouring countries to promote its foreign trade. During his tenure, there was a constant effort to diversify external partnerships in order to balance the influence that the markets of Argentina and Brazil had on the Paraguayan economy. And that is why, at the regional level, Paraguay sought to strengthen agreements with other countries with lesser weight in the region, such as Bolivia, Uruguay and Ecuador (Luís, Berdu and Zague 2015).

During this context, it is also worth highlighting the Paraguayan Congress's position against Venezuela's entry into MERCOSUR, which caused clashes mainly with Brazil and Argentina, which had a different position on the matter. It is worth mentioning that the position of the Paraguayan congress was divergent from President Fernando Lugo's. He defended, in an interview given after his removal, the admission of Venezuela and pointed out that the position of the Paraguayan congress seemed to be wrong, considering that the other three parliaments and presidents of the bloc had already accepted Venezuela into MERCOSUR (REDE BRASIL ACTUAL, 2012).

According to Luís, Berdu and Zague (2015), at a regional level, Paraguay's most strained and tense relationship was with Venezuela, since the former had been blocking the entry of the latter into the bloc, remembering that consensus is required for the entry of new members.

So, considering the presented historical and political context of the country, the argument that the removal of Lugo meant a threat to stability in the region and an affront to democratic principles seemed valid and well-founded.

2) *The regional context*

The background of the Paraguayan suspension must also take into account the regional context. According to Teruchkin and Nique (2001), MERCOSUR encompasses countries with different socio-political-cultural and economic realities. For this reason, in order to understand intra-bloc relations, it is necessary to consider the importance of internal power relations, so it is worth noting the power asymmetries, which grant Brazil and Argentina the role of indisputable 'chiefs'. Also important is the fact that the Paraguayan episode arouses curiosity because it was the only one unanimously condemned by the South American countries even though there had already been similar impeachment processes in the region (Lima 2012). While Colombia, Chile, Peru and Uruguay called their respective ambassadors for consultations and stated that the removal did not respect due process, Argentina, Bolivia, Ecuador and Venezuela withdrew their ambassadors from

the country indefinitely. In Brazil, President Dilma Rousseff considered the Paraguayan episode a 'dangerous precedent'.

It was also alleged that Paraguay did not have sufficient credibility due to its history of political and economic instability. This fact made it possible for Brazil and Argentina to induce the application of the suspension due to the structural asymmetries existing between the member countries of MERCOSUR. According to Souza, Oliveira and Gonçalves (2010), structural asymmetries are one of the main challenges to the regional integration process. They refer to differences in geographic position, economic size, factor endowment, access to infrastructure, institutional quality and level of development.

As indicated by Souza, Oliveira and Gonçalves (2010), according to World Bank data, in 2008, Brazil represented around 80% of the population and 75% of the bloc's Gross Domestic Product (GDP), while Paraguay and Uruguay together represented less than 4% of the population and less than 3% of the GDP. Brazil and Argentina play an important and powerful role in the region, including being the leaders of the integrationist movement since its inception, dictating a good part of the 'rules of the game' within the context of the Bloc.

According to Bakker (2013), Brazil is seen as an important regional player by Latin American countries, especially inside MERCOSUR. In fact, Brazil acted as the driving force behind the creation of the bloc, framing its development, and largely shaping its agenda and priorities. Brazilian interests sometimes stand out in relation to others in the bloc's deliberations. It should be highlighted the period from the 2000s onwards, especially during the Lula da Silva Government that had emphasized and deepened the integration process.

Argentina is the second largest country in the bloc. After Brazil, it is the most important country in MERCOSUR. Uruguay is the smallest member, but, according to Bakker (2013), it has the most consolidated liberal and democratic traditions, and it has always been a dedicated supporter of the strengthening of MERCOSUR, as well as a defender of the creation of Supranational Institutions in the bloc. Economically, Uruguay relies heavily on trade with Brazil and Argentina, and sometimes encounters difficulties with the protectionist policies from both countries.

In turn, according to Bakker (2013), the difference between interests and expectations, as well as levels of development between the largest and smallest members, is more evident in relation to Paraguay. Paraguay has the lowest level of development, a relatively high rate of poverty and an unstable democratic structure. All said, these factors bring to light the discussion of how the existence of large structural and economic asymmetries among MERCOSUR member countries can impact the intra-bloc decision-making processes.

3) The weaknesses in the MERCOSUR Democratic Clause

The concept of 'legalization' (Abbot et al. 2000) allows us to analyse a specific rule and point out weaknesses that would enable its strategic use. In order to explain the different

patterns of legalization, a multidimensional concept was formulated that identifies ‘ideal types’ of legalization. At the extremes, we would have ‘hard law’ and ‘soft law’ (Abbott et al. 2000). Three components of the legalization concept are fundamental to the framing of a regulation: commitment, precision and delegation. Commitment implies a greater degree of sanction to its transgressors; precision refers to the rigidity of the norm’s prescription (the greater the precision, the lesser possibility of dissenting interpretations for the norm); delegation expresses the degree of willingness of states to allow ‘third parties’ to interpret and apply the rules (courts, arbitrators, etc.).

Abbott et al. (2000) consider that highly legalized institutions would be those in which the rules are mandatory for the parties through the link to the rules and principles established by International Law. Also important is how accurate are the rules, and if the authority to interpret and apply the rules have been delegated to third parties. Since different levels of obligation, precision and delegation can be combined, institutions can formulate rules that have different levels of these elements in order to adapt them to the interests of the actors.

So it rests clear that the level of legalization of an institution reflects political choices of the actors involved in its formulation. The process of treaties’ formulation is designed to ensure that the end result represents, to some extent, an accommodation of the interests of the negotiating states. Thus, it is concluded that governments normally only assume international legal obligations that correspond to their interests (Chayes and Chayes 1993). Being so, one may conclude that the formulators of legal instruments can combine any level of obligation, precision and delegation to produce the institution that best meets their specific needs or interests. Therefore, legalization refers to a particular set of characteristics that institutions may (or may not) possess. These characteristics vary according to the context. Abbott et al. (2000) note that these characteristics are independent of each other, and the authors of the legal instrument may combine them in different degrees, in accordance with their specific needs.

As mentioned above, the Ushuaia Protocol does not contain a more detailed and specific concept of what would be considered a violation of the principle of the democratic order that would give rise to the application of the clause. At this point, one may raise the element of ‘precision’ of the concept of legalization, which concerns the degree of definition of a rule regarding the required conduct. The protocol does not contain what is meant by ‘democratic value’, ‘full validity of democratic institutions’ or ‘democratic order’. As a consequence, since one may find different theoretical concepts of democracy, this is problematic when we consider when a state is in disagreement with such elements.

In addition, MERCOSUR doesn’t have supranational institutions with competence to manage the application of these rules due to their intergovernmental nature. The interpretation, application and management of their rules are subject to their own members, at the headquarters of the Common Market Council. In view of this, the Democratic Clause of MERCOSUR is under risk of strategic application, due to the low level of precision. In addition, because of its intergovernmental model, for a norm to be effective and binding, it needs to be incorporated by each state and be in terms with each country’s internal

legislative process. So, even if the member State has agreed to obey and comply with the norms postulated by the bloc, the obligation will depend on ratification by all member countries. This is what happened with the Ushuaia II Protocol, since it requires ratification by all member countries to be taken into effect (which has not happened yet), one must not consider it an obligation. In these terms, under the concept of legalization, one may consider that the MERCOSUR Democratic Clause would have an intermediate degree of obligation, since the obligatory nature of its rules would depend on the internal ratification process by each state party.

Finally, let's observe the spectrum of delegation of the clause. As Abbott et al. (2000) explain, delegation occurs when states delegate authority to third parties to implement, interpret and enforce rules. In the case of MERCOSUR, according to Drummond (2011), due to historical roots, the members value the notion of national sovereignty, until today a basic principle of their political culture. Thus, the rationale of preserving national sovereignty prevails throughout the integration negotiations. As for the procedure for invoking the Democratic Clause, the delegation of competence is limited to the Common Market Council, which is competent to deliberate about breach or threat of breach of the democratic order, as well as the sanctions to be applied. (Drummond 2011). According to the above, one may consider that MERCOSUR has a low degree of delegation, while its institutions have limited competences and little autonomy.

The argument presented by Abbott et al. (2000) doesn't allow the conclusion that one kind of legalization is inherently superior or better than another. Nevertheless, one may consider that the legalization in MERCOSUR is relatively low, largely because the shared feeling of defence of sovereignty of its members. It is also noteworthy that it seems not to be in the bloc's interest a deepening and greater rigidity of its institutional structure.

Given these arguments, it is made clear that the weaknesses and gaps of the MERCOSUR Democratic Clause made possible its use for purposes beyond the defence and promotion of democracy. Thus, the suspension of Paraguay, despite the occurrence of a dubious impeachment process in that country, allows for the guessing of an opportunistic decision, concomitant with the decision of Venezuela intake in the bloc. One reason to consider so is the fact of not waiting for the end of Paraguay's suspension period, as proposed in the Ouro Preto Protocol, to conclude Venezuela's process of admittance (which, as seen before, must be based in a consensus).

4) The 'opportune' adhesion of Venezuela to Mercosur

Venezuela's entry as a full member of MERCOSUR was made official on 31 July 2012, after 6 years of negotiations. Throughout this period, Venezuela faced a series of political impasses to materialize its entry into the bloc. The main one concerns its turbulent relationship with Paraguay (Paiva et al. 2015). According to Bernalette (2012), Venezuela's attempt to move closer to MERCOSUR dates back to the Government of President Rafael Caldera, in the mid-1990s. However, in that period, efforts to bring them closer did not

materialize, as Venezuela's foreign policy preferred to turn to the Andean Community of Nations (CAN), formed by Bolivia, Colombia, Ecuador and Peru.

In 2005, Venezuela, under the presidency of Hugo Chávez, formally requested its accession to the bloc, and the Act of accession was signed at the MERCOSUR Summit Meeting in Asunción in July of that year. After signing this agreement, the presidents of Brazil and Argentina, Lula da Silva and Nestor Kirchner, respectively, granted Venezuela the legal status of 'full member in the process of joining'. Because of the rise of leftist governments in the region and the change in the strictly economic character of MERCOSUR (Brazil and Argentina started to defend the promotion of social and political dimensions as part of the integration process), Chávez would have realized how these governments were bringing important changes to the bloc. So the Venezuelan president began to consider MERCOSUR an alternative to neoliberal integration processes (Paiva et al. 2015).

In 2006, the Protocol of Accession of Venezuela to MERCOSUR was signed. Nevertheless, the ratification by the Congresses of all four member countries was a *sine qua non* condition for its full participation. Only Argentina and Uruguay did so immediately, while Brazil and Paraguay remained hesitant. While in the case of Brazil resistance to Venezuela's entry came from the congress, which diverged from presidential positions, in Paraguay resistance to the country's entry into the bloc was consensual between the legislature and the executive. It should be noted that, in the Brazilian case, during the Lula da Silva and Dilma Rousseff governments there was considerable presidential support for Venezuela's entry into MERCOSUR, the main obstacle being the legislature.

According to Paiva et al. (2015), one of the reasons against Venezuela's entry into the bloc alleged by Paraguay was the understanding that the country was experiencing certain political instability and a kind of authoritarianism, which could conflict with the Democratic Clause of MERCOSUR. And so, until July 2012, the Paraguayan Legislature and Executive did not ratify Venezuela's full adhesion to MERCOSUR, alleging that the country did not fully respect the Democratic Clause.

As we will see below, the ratification of Venezuela's accession to the bloc by the Brazilian Legislature took place on 15 December 2009, by 35 to 27 votes after a cycle of debates, with public hearings in the Federal Senate. Thus, the *de facto* membership of Venezuela now depended only on the Paraguayan Congress, which once again rejected it in August 2012 by 31 votes to 3. This state of affairs remained until July 2012, when, with the application of Paraguay's suspension, the other member countries approved the full adhesion of Venezuela to the Bloc (Paiva et al. 2015).

As mentioned, in Brazil the discussion about Venezuela's incorporation process into MERCOSUR has raised controversy. One of the debates took place in the Senate Foreign Relations Committee between April and October 2009. Through public hearings, the aim was to support the Brazilian Parliament's deliberation regarding the ratification of Venezuela's accession to MERCOSUR. In one of her sessions, Maria Regina Soares de Lima considered that:

Venezuela's adhesion to MERCOSUR will imply real guarantees that external threats or situations of institutional risk, as occurred in the

2002 coup attempt, will be repudiated by the other members, as provided for in the Ushuaia Protocol. (...) The validity of the protocol will guarantee Venezuela the stability of political institutions and will put it on guard against any attempts to interrupt the democratic process, as happened in Paraguay, the other MERCOSUR leaders will respond to any attempt interruption of the democratic constitutional process. (Federal Senate 2010: 95)

At the same public hearing, Professor Celso Lafer, and former foreign minister of President Fernando Henrique Cardoso, defended that Venezuela's entry could compromise MERCOSUR's efficiency and international identity, since he considered the Venezuelan regime an autocracy. According to the former chancellor, Venezuela would be an elective autocracy and not a democracy (Federal Senate 2010: 89). Finally, Lafer concluded that:

In summary, President Chávez does not comply with the letter and spirit of the MERCOSUR Democratic Clause, which is why, in my opinion, it substantively calls into question the convergence of the fields that give the meaning of the MERCOSUR Project. (...) [T]he importance of this economic relationship and political care for the neighbourhood is indisputable. However, (...) to incorporate, as a full member, President Chávez's Venezuela to MERCOSUR is to compromise identity, efficiency and the bloc's power of attraction as an expression of open regionalism. (Federal Senate 2010: 89)

When asked by Senator Fernando Collor whether she would agree that compliance with the Democratic Clause of the 1998 Ushuaia protocol should be verified as a pre-condition for accession and not *ex-post facto*, Professor Maria Regina Soares de Lima responded as follows:

I will read here the first article of the agreement: 'The full effectiveness of democratic institutions is an essential condition for the development of integration processes between the States Parties to this protocol.' Participatory, plebiscitary democracy is a form of democracy. There is electoral competition. (...) The system is not exactly the same as ours, but it is fully democratic and is inserted within a more participatory conception of democracy. (Federal Senate 2010: 102)

According to Lafer (2013), in Brazil, the expansion of MERCOSUR through the entry of Venezuela was supported by arguments of economic interest and its geographical significance, taking into account that it would contribute to the revitalization of MERCOSUR and would serve Brazilian national interests. Venezuela's accession to MERCOSUR was formalized in the Joint Communiqué of Mendonza, on 29 June 2012, shortly after the decision to suspend Paraguay. The communiqué was signed by the presidents of Argentina (Cristina Kirchner), Brazil (Dilma Rousseff), Uruguay (José Mujica) and the Venezuelan Foreign Minister (Nicolás Maduro), representing President Hugo Chávez.

Considering what had happened, Lafer (2013) argued that the Ouro Preto Protocol, in its art. 37, which governs MERCOSUR's decision-making system, establishes that 'decisions by MERCOSUR bodies will be taken by consensus and with the presence of all States Parties'. For this reason, even if Paraguay's suspension decision had attributes of legality, it should only be applicable to deliberations on *ordinary* matters and never through an *extraordinary* decision of enlargement that alters the life and nature of MERCOSUR. Lafer (2013) questions whether the decision to suspend Paraguay, which gave rise to an imposing decision to incorporate Venezuela, would have been a means of circumventing, without good faith, the prior and legally valid Paraguayan opposition to this decision. And for this reason, he concludes that the decision to incorporate Venezuela into MERCOSUR, in the manner in which it was taken, is *per se* an illegality aggravated by the previous suspension of Paraguay, which prevented its participation in an extraordinary decision.

Sturaro and Frota (2012) argue that the main implication of Venezuela's entry into the MERCOSUR collective defence of democracy regime is its weakening. The decision to incorporate the country would be inconsistent with two elements: the principle that the full effectiveness of democratic institutions is an indispensable condition for the existence and development of MERCOSUR and with the Democratic Clause established in the Ushuaia Protocol. This is so due to the fact that the Venezuelan regime would not be fully democratic. According to the authors, Venezuela's political regime during the Chávez Era would only partially meet the 'minimum' definition of democracy.

One has to consider Lafer's (2013) argument that it is reasonable that such a decision, the entry of a new member to the bloc, from a legal point of view, should have been taken and agreed upon by all other members, so as to safeguard the legitimacy of the decision. So, the most prudent path would have been to wait for the end of the penalty applied to Paraguay, giving this country the opportunity to participate in the deliberation regarding the entry of Venezuela.

In addition to the question of the legitimacy of the decision, there is also controversy regarding the question of measuring the quality of Venezuelan democracy. The Ushuaia Protocol urges for the measurement of the democratic variable when a new member is to join the bloc. However, given the absence of well-defined criteria in the Protocol for assessing the democratic condition of a country, this analysis is quite elastic, encompassing the most different conceptions of democracy, as exposed in the speech of Professor Maria Regina Soares de Lima, at the public hearing in the Federal Senate.

Mata Diz (2012) highlights that, if the political decision takes place outside the norms created and adopted by the state itself, it is characterized not only as incoherent, but also as illegal. The author argues that the political decision to suspend Paraguay was taken by the other States Parties based on clearly ideological and national understandings, given the absence of greater rigor in the application and interpretation of the facts. And because of this, one of the consequences of such decision-making, both for Paraguay's suspension and Venezuela's adhesion, would represent confirmation that the integration process in the Southern Cone continues to be the stage for the particular interests of some states (Mata Diz 2012).

According to Almeida (2011), the Democratic Clause as it is currently arranged seems to be insufficient to guarantee the full validity of the democratic regime in member countries or in the candidates to be one, since it would be unable to assess the quality of democracy in regimes formally elected by popular vote. Given these arguments, we can conclude that the decision taken by the other MERCOSUR member countries regarding the entry of Venezuela amid the suspension of one of its members seemed to correspond to the interests of the political groups that were in power in Brazil and Argentina, who considered that Venezuela's entry would contribute to the advancement of MERCOSUR.

Final remarks

Paraguay's suspension from MERCOSUR in 2012 resulted from the application of the Mercosur Democratic Clause. We have seen that, despite the concern with the issue of democracy going back to the creation of MERCOSUR, there were no specific normative instruments on this subject until 1998, when the Ushuaia I Protocol was signed. Thus, anchored in this legal instrument, the MERCOSUR members considered the removal of President Lugo in disagreement with the aforementioned Clause and they decided to apply the penalty of political suspension to the country until democratic normality was re-established in Paraguay.

These events generated controversy. On the occasion of the decision to suspend Paraguay, the presidents of Brazil, Argentina and Uruguay decided for the full adhesion of Venezuela to the bloc, without the participation of the vote of Paraguay, which had been suspended. It was highlighted how Paraguay had positioned itself in previous meetings of the Bloc in opposition to Venezuela's entry into the bloc, including being the object of consensus between the Paraguayan legislature and executive, who did not accept to ratify Venezuela's accession agreement.

We also saw how Paraguay's defence speech regarding the illegality of its suspension from the bloc and the decision regarding Venezuela's full membership was hampered by its negative background of political and economic instabilities, and recent democratic instability. In addition, Paraguay was the 'weakest' country in the bloc, lacking capabilities of negotiating *vis-à-vis* other member countries.

In addition, there is also the issue of weaknesses identified in the MERCOSUR Democratic Clause.

Under the concept of 'legalization' was identified the absence of the element of 'precision' in the norm, since the protocol does not contain specific criteria and concepts that should guide its applicability. It was also seen how the application of the clause is quite elastic, the interpretation of the norm being in the hands member states, which sometimes translates into what is most convenient for them.

It was observed that the country's accession process to MERCOSUR dates back to the beginning of the 2000s. However, the ratification of its entry remained in the hands of the Brazilian and Paraguayan legislatures. In Brazil this resistance was restricted to the

legislature. In Paraguay the issue was consensual in Executive and the Legislative houses, which over the years sustained their opposition to the country's entry into the bloc.

Taking Paraguay's history of instability and political weaknesses, the gaps in the Democratic Clause and the issue of Venezuela's entry, whose only barrier was Paraguay's negative vote, one may conclude that, in the case of Paraguay's suspension, the MERCOSUR's States Parties made strategic use of the clause, as its application ended up making it possible to reach other interests. All that said, one may prove right the hypothesis that the first use of the MERCOSUR Democratic Clause also reflected interests outside the defence of democracy.

Yet, one may consider that the decision that brought Venezuela into the bloc was illegal, since it did not comply with the provisions of the Treaty of Asunción and the Protocol of Ouro Preto. Those legal instruments determine, respectively, the mandatory approval of the admission request by all States Parties (Article 20 of the Treaty of Asunción) and that the decisions of the MERCOSUR will be taken by consensus and with the presence of all States Parties (Article 37 of the Protocol of Ouro Preto). In addition, the decision to suspend Paraguay also did not follow some steps of the rite provided for in the Ushuaia Protocol.

Taking into account the facts and arguments presented in this article, it seems reasonable to consider that the case of Paraguay's suspension was an attitude that could be debated. Finally, we can consider that other questions regarding the Mercosur Democratic Clause can be raised. Among them, the discussion regarding Venezuela's accession process itself, in order to assess whether that country actually corresponded or not, at the time of its entry, to the model of democracy required by the bloc. In addition, there is a controversy regarding the impeachment process that took place in 2016 in Brazil. The dismissal of President Dilma in a troubled process raised voices to question the legality of the act. Even so, in the context of MERCOSUR, there was not even remote consideration of suspending Brazil from the bloc. May we consider that two sets of standards were applied? This question is reserved for future researches on the subject.

Notes

- 1 For more details on the process of formation of the political system in Paraguay in the 19th and early 20th centuries, see Beittel (2010).
- 2 Alfredo Stroessner was a Paraguayan dictator who, under an authoritarian government, governed Paraguay between 1954 and 1989, a period that became known as "El Stronato".

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Questionando a suspensão do Paraguai do MERCOSUL: a primeira aplicação da Cláusula Democrática do bloco regional

Resumo: Este artigo analisa a primeira aplicação da Cláusula Democrática do MERCOSUL, que ocorreu durante a XLIII Cúpula de Chefes de Estado em 2012. Foi decidido suspender o Paraguai porque os Estados membros concluíram que o processo de impeachment do presidente paraguaio, Fernando Lugo, não teria seguido os princípios democráticos. Como o evento gerou questionamentos e controvérsias, o artigo contribui para uma explicação do processo decisório que culminou na decisão pela suspensão política do Paraguai do bloco regional. Argumenta-se que os Estados Partes do MERCOSUL, justificados pela histórica fragilidade política e econômica do Paraguai e pelo contexto do impeachment do Presidente Fernando Lugo, teriam utilizado estrategicamente a cláusula para atingir interesses que vão além da defesa da democracia, entre eles, a adesão da Venezuela ao Bloco.

Palavras-chave: MERCOSUL; Protocolo Ushuaia; Cláusula Democrática; Paraguai; Venezuela.

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